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8 ***Co-Lead Class Counsel***

9 [Additional counsel listed on signature page]

10 **UNITED STATES DISTRICT COURT**

11 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

12 **IN RE: TOLL ROADS LITIGATION**  
13 PENNY DAVIDI BORSUK; DAVID  
COULTER; EBRAHIM E. MAHDA;  
14 TODD QUARLES; TODD  
CARPENTER; LORI MYERS; DAN  
15 GOLKA; and JAMES WATKINS on  
Behalf of Themselves and All Others  
16 Similarly Situated,

Case No.: 8:16-cv-00262 AG (JCGx)

17 Plaintiffs,  
18 v.  
19 **FOOTHILL/EASTERN**  
20 **TRANSPORTATION CORRIDOR**  
21 **AGENCY; SAN JOAQUIN HILLS**  
22 **TRANSPORTATION CORRIDOR**  
23 **AGENCY; ORANGE COUNTY**  
24 **TRANSPORTATION AUTHORITY;**  
25 **3M COMPANY; BRiC-TPS LLC;**  
26 **RHONDA REARDON; MICHAEL**  
27 **KRAMAN; CRAIG YOUNG; SCOTT**  
28 **SCHOEFFEL; ROSS CHUN;**  
DARREL JOHNSON; LORI  
DONCHAK; WILLIAM P. DUFFY;  
COFIROUTE USA, LLC; and DOES  
3-10, inclusive,

**PLAINTIFFS' REQUEST TO LIFT  
STAY FOLLOWING NINTH  
CIRCUIT'S DENIAL OF  
DEFENDANTS' 23(F) AND 1292(B)  
REQUESTS**

Judge: Hon. Andrew J. Guilford  
Courtroom: 10D  
Complaint Served: Jan. 15, 2016  
Removed: Feb. 16, 2016

Defendants.

1                   Plaintiffs Penny Borsuk, David Coulter, Ebrahim Mahda, Todd Quarles, Todd  
 2 Carpenter, Lori Myers, Dan Golka, and James Watkins (collectively, “Plaintiffs”),  
 3 through their respective attorneys of record, hereby submit the following Request to  
 4 Lift Stay Following the Ninth Circuit’s Denial of Defendants’ 23(f) and 1292(b)  
 5 Requests for Review.

6                   **UPDATE ON DEFENDANTS’ APPEAL TO THE NINTH CIRCUIT**

7                   On April 24, 2019, the Ninth Circuit denied Defendant 3M’s Petition for  
 8 Permission to Appeal this Court’s Class Certification Order, holding: “The court, in  
 9 its discretion, denies the petition for permission to appeal the district court’s October  
 10 3, 2018 order granting class action certification.” See Ninth Circuit Order Dated April  
 11 24, 2019, attached as Exhibit 1. The Ninth Circuit also denied Defendants’ request  
 12 for 28 U.S.C. §1292(b) review notwithstanding Defendants setting forth their  
 13 arguments about how this case involves issues of first impression as to the meaning  
 14 of Streets and Highways Code §31490, the types of transmissions at issue and the  
 15 amount of the damages for each type of transmissions (alleging certification of the  
 16 class creates a “death knell” for them). See 3M Petition at pp. 10, 15-18, 24, attached  
 17 as Exhibit 2.

18                   Specifically, 3M (and all the other Defendants who joined in 3M’s petition),  
 19 argued:

20                   This is the first case ever brought under § 31490. Both in its class  
 21 certification order and at subsequent hearings, the district court repeatedly  
 22 emphasized that the issues underlying Plaintiffs’ § 31490 claims warrant  
 23 immediate appellate review under 28 U.S.C. § 1292(b). (*See* Exhibit 1, at  
 24 20.) The court declared that the issues are “significant, complex, unclear  
 25 under state law.” (Dkt. 496; Sept. 24, 2018 Hrg. Tr. At 5:1-3.) Later, the  
 26 court reiterated: “I think this case has sufficient complexity through no fault  
 27 of the parties where a 1292(b) appeal is appropriate.” (Dkt. 502; Oct. 1, 2018  
 28 Hrg. Tr. at 7:1-3.)

1 Consistent with the district court's statements, **3M is moving the district**  
 2 **court to certify its orders for interlocutory review under 28 U.S.C. §**  
 3 **1292(b)**. If the court does so, this Court should grant the § 1292(b) petition  
 4 and consolidate it with this appeal so the Court can address all issues at once.  
 5 Granting a Rule 23(f) petition in parallel with a § 1292(b) petition is a highly  
 6 effective way to streamline proceedings because it allows the Court to  
 7 “clarify some imprecision in the case law, while at the same time giving the  
 8 parties (and the lower court) a better sense as to which aspects of the class  
 9 certification might reasonably be open to subsequent reconsideration.”  
 10 *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 295 (1st Cir. 2000)  
 11 (granting Rule 23(f) review); *see also Tilley v. TJX Cos., Inc.*, 345 F.3d 34,  
 12 39 (1st Cir. 2003) (granting Rule 23(f) review because the parties “have fully  
 13 briefed the merits, and postponing a decision would be wasteful”).

14 Exhibit 2 at 24-25 (emphasis added).

15 To which the Ninth Circuit unequivocally responded, “To the extent that  
 16 petitioner seeks relief under 28 U.S.C. §1292(b), petitioner’s request is denied. Any  
 17 pending motions are denied as moot.”

18 All other Defendants joined in 3M’s petition and did not file separate requests.  
 19 There being no other appeals pending, and the Ninth Circuit denying 3M’s request to  
 20 hear their contemplated §1292(b) motion (or to provide §1292(b) relief), Plaintiffs  
 21 respectfully request that this Court lift the stay in this matter and set a status  
 22 conference to take place on May 13, 2019<sup>1</sup>, or as soon as is practicable, to set dates  
 23 for the hearings on Plaintiffs’ Motion for Approval of Class Notice Plan, and to reset  
 24 the Trial date.

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<sup>1</sup> The Parties will be appearing before this Court on May 13, 2019, in the Associated Industries Insurance matter for a hearing on Plaintiffs’ and TCA’s Motions to Stay.

1 Respectfully submitted,

2 Date: April 25, 2019  
3 COAST LAW GROUP LLP  
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17 Date: April 25, 2019  
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1 Pursuant to Local Civil Rule 5-4.3.4(a)(2)(i), the above-listed filing attorney  
2 certifies that all other signatories listed, and on whose behalf this filing is submitted,  
3 concur in this filing's content and have authorized its filing.

4  
5 Date: April 25, 2019

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